



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 15468431

Date: AUG. 12, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an adjunct instructor, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established he is well positioned to advance the proposed endeavor or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief and additional evidence to assert that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).¹ Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS)

¹ In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998).

may, as matter of discretion,² grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The Director also determined that the Petitioner established that his proposed endeavor met the first prong set forth in the Dhanasar analytical framework. For the reasons discussed below, however, we must withdraw the Director's conclusion that the Petitioner met the national importance portion of the first prong.

On the Form I-140, Immigrant Petition for Alien Worker, which the Petitioner filed in July 2019, he provided the following information:

² See also *Poursinav. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

³ See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner earned three foreign degrees: a bachelor's degree in chemistry; a master's degree in organic chemistry, and a Ph.D. degree in organic chemistry. He also earned a U.S. master's degree in integrated studies (chemistry and physics).

Part 5 - Additional Information About the Petitioner

Section 11. Occupation: Adjunct Instructor

Part 6 - Basic Information About the Proposed Employment

Section 1. Job Title: Adjunct Instructor

Section 2. SOC Code: 17-2031⁵

The Petitioner also stated on his Form I-140 that his position is part-time at twenty hours per week. In Section 3 of Part 6, which requests the “Nontechnical Job Description,” the Petitioner referred our attention to an attached employment verification letter. A May 2019 employment verification letter from [REDACTED] of the Department of Mathematics and Natural Sciences within [REDACTED] University [REDACTED] in Missouri states that the Petitioner has been employed as an “Adjunct Instructor” since January 2019. The letter detailed the Petitioner’s duties as “providing syllabi to students, instructing students in Chemistry, tracking student attendance, creating lectures, preparing class assignments, and measuring student performance.” The Petitioner submitted a Form ETA 750 Part B with his initial filing and it also provided “Adjunct Instructor” as the name of the Petitioner’s job. The Petitioner stated on this form that he works twenty hours a week with the duties of “[t]eaching, helping students performing lab. Lab safety precautions. Grading and preparing quiz and midterms, and final exams. Designing some lab sessions.”

The initial filing predominantly provided details concerning the Petitioner’s past research work but contained very little information about the Petitioner’s proposed endeavor. According to the brief and other documents within the record, the Petitioner has been a volunteer post-doctorate research affiliate at [REDACTED] University [REDACTED] since his graduation from the university in 2018. The Petitioner submitted an abstract of a research project that combines a research group from [REDACTED] headed by [REDACTED] with computational chemistry coursework for [REDACTED] students. Although this project was described in detail, the Petitioner did not state whether it is his proposed endeavor. The Director issued a request for evidence (RFE) which informed the Petitioner that he “did not provide a detailed description of [his] proposed undertaking or venture” and that in order to determine whether his proposed endeavor had substantial merit and national importance, he needed to submit additional evidence.⁶ The Director also noted in the RFE that the Petitioner’s Adjunct Instructor duties did not include research.

In his RFE response, the Petitioner stated that his “proposed endeavor is to continue to conduct research on [REDACTED] which is vital to identifying new [REDACTED] .” Specifically, he noted that his “future research on [REDACTED] [REDACTED] is “crucial to finding proper [REDACTED] targets” and that “[t]hese targets are pivotal to [REDACTED] design computations to find potential new [REDACTED].” The Petitioner stated that he intends to continue his work as an affiliate research scientist at [REDACTED] and plans to pursue National Institute of Health (NIH) grant funding for research into the “[REDACTED]

⁵ The Department of Labor’s (DOL) Occupational Information Network (O*NET) Summary Report for the standard occupational classification (SOC) code 17-2031.00 corresponds to the occupation of “Bioengineers and Biomedical Engineers.” See <https://www.onetonline.org/link/summary/17-2031.00> (last visited Aug. 12, 2021).

⁶ The purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12).

[REDACTED]’s active sites.” He stated that his research studies will focus on “how a flexible molecule adopts the conformation or a distinct shape,” the link between molecular composition and molecular shape, and finding optimal ways to control the molecules such that they function for a [REDACTED]

In addition to the research related to [REDACTED], the Petitioner’s RFE response also stated that he intends to “continue [his] Conformational Analysis research” and that it has “significant potential to advance [REDACTED] of cancerous tumors.” Specifically, the proposed endeavor includes “overcom[ing] limitations in cancer [REDACTED] through [REDACTED] Conformational Analysis research. The research is focused on biological water and natural products. . . [and] is intended to help with the [REDACTED] of cancerous tissue . . . [REDACTED] techniques.⁷

Based upon these descriptions, we question whether the Petitioner selected the correct occupational category for his field of endeavor. As mentioned, the Petitioner selected SOC code 17-2031.00, which corresponds to the occupation of “Bioengineers and Biomedical Engineers.” Within this classification, O*NET’s Summary Report provides a sample of reported job titles including: Biomedical Electronics Technician, Biomedical Engineer, Biomedical Engineering Technician, Biomedical Equipment Technician (BMET), Biomedical Technician, Engineer, Process Engineer, Research Engineer, and Research Scientist. The O*NET summary report also describes duties within the occupational classification as: “[a]pply knowledge of engineering, biology, chemistry, computer science, and biomechanical principles to the design, development, and evaluation of biological, agricultural, and health systems and products, such as artificial organs, prostheses, instrumentation, medical information systems, and health management and care delivery systems.”

Chemistry, rather than engineering or technician work, appears to be the main focus of the Petitioner’s education and research. Therefore, we question whether SOC code 19-1021.00, corresponding to “Biochemists and Biophysicists,” would have been a more appropriate classification.⁸ The summary of this occupation includes the sample reported job titles of Analytical Research Chemist, Biochemist, Biophysics Researcher, and Scientist, along with the following occupational description:

Study the chemical composition or physical principles of living cells and organisms, their electrical and mechanical energy, and related phenomena. May conduct research to further understanding of the complex chemical combinations and reactions involved in metabolism, reproduction, growth, and heredity. May determine the effects of foods, drugs, serums, hormones, and other substances on tissues and vital processes of living organisms.

Upon collective examination of the initial filing and the RFE response, we conclude that significant unresolved questions exist concerning the particulars of the Petitioner’s proposed endeavor. Namely, we question how the Petitioner intends to incorporate his Adjunct Instructor duties into his research work, as well as whether the Petitioner selected the correct occupational classification for his position. Nevertheless, the Director found that the Petitioner sufficiently described the proposed endeavor such that he had established eligibility under the first prong of Dhanasar, relating to the proposed endeavor’s

⁷ The Petitioner has not stated whether he plans to continue his part-time adjunct instructor duties while he carries out his proposed endeavor work.

⁸ See <https://www.onetonline.org/link/summary/19-1021.00> for additional information (last visited Aug. 12, 2021).

substantial merit and national importance. The Director determined, however, that the Petitioner was not well positioned to advance his proposed endeavor, in part because the evidence did not persuasively demonstrate that the Petitioner had a record of success in his field, nor did it show that the Petitioner had a research position or funding with which to advance the proposed endeavor. Furthermore, the Director determined that the evidence failed to show that it would be impractical to obtain a labor certification, that the Petitioner's contributions were sufficiently urgent, that his knowledge and skills distinguish him from others in his field, or that the projects he investigates could significantly influence his field. Therefore, in April 2020, the Director denied the petition under the second and third prongs of the Dhanasar framework.

The Petitioner then filed a motion to reopen and reconsider the Director's decision, and within his motion, he included two letters from [REDACTED] a Professor in the Department of Chemistry at [REDACTED]. One of the letters was an employment letter that offered the Petitioner a full-time, paid postdoctoral student researcher position at [REDACTED] to begin on or after July 1, 2020. The other letter was in support of the Petitioner's national interest waiver petition and offered additional details on the research that he would perform in his new position with [REDACTED] at [REDACTED]. The letters described new research topics that differ from the Petitioner's previously-articulated research focus. The Petitioner did not submit a new or updated proposed endeavor or any information explaining how he would maintain focus on both his proposed endeavor research topics and his adjunct instructor duties. As articulated by [REDACTED], the Petitioner will now "build upon his prior research by designing [REDACTED] [REDACTED] of biologically important molecules using computational organic chemistry and machine learning, which is vital to the synthesis of [REDACTED]." In addition, [REDACTED]'s description of the new research included the following verbatim duties for the Petitioner:

- [G]enerate new in silico catalyst libraries and calculate and validate features for different optimization problems;
- [I]dentify potential ideal targets using certain chemical reaction optimization problems;
- [P]erform these optimizations based on either regression analysis or machine learning algorithms;
- [M]odify or design new workflows to minimize synthetic effort;
- [U]se 3D convolutional neural networks to model alignment independent structural analysis;
- [D]evelop 2D convolutional networks which do not require the 3D structure to make models; and
- [G]enerate 3D point-cloud representations of molecules using 2D-graphs and apply it to obtain optimized new catalysts for [REDACTED] relevant targets.

[REDACTED] stated that their catalyst design research will benefit the medical community as a whole, but patients suffering from cancer or other infectious disease in particular. Specifically, he stated that their research "will also benefit U.S. hospitals and clinical sites by designing and synthesizing new [REDACTED], which will reduce costs by introducing more affordable and more reliable [REDACTED].

The Director denied both motions, concluding that the Petitioner's new job offer and start date arose subsequent to the filing of the petition and that USCIS would not consider evidence that came into being only subsequent to a petition filing. Moreover, the Director noted that the Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971). Although we need not consider this evidence, the contents of the evidence raise additional concerns that undermine the Director's previous determination of the Petitioner's eligibility under the first Dhanasar prong.

On appeal, the Petitioner relies primarily upon the evidence he previously submitted but contends that the research he will perform with [REDACTED] builds upon and is a continuation of his prior research. However, the Petitioner offers little support for this assertion. It is not well explained whether the Petitioner intends to end his research on [REDACTED] or the computation analysis performed to advance [REDACTED]

[REDACTED] If he intends to continue it, he has not explained how it will be incorporated into his new catalyst design, machine learning, and modeling work, or how much time will be spent on each research topic. If the research topics on motion are similar to those described in the proposed endeavor such that they do not represent a significant change in focus, the Petitioner has not explained how this is so. Nor can we ascertain whether the Petitioner will maintain his duties as an adjunct instructor as originally articulated on the Form I-140, via the employment verification letter, and on the Form ETA 750 Part B. In Dhanasar, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” Id. at 889. Here, the information provided by the Petitioner on motion did not clarify or provide more specificity to the proposed endeavor as initially described, but rather changed its focus.

The motion presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. See Matter of Michelin Tire Corp., 17 I&N Dec. 248 (Reg'l Comm'r 1978); see also Dhanasar, 26 I&N Dec. at 889-90. It appears as though the Petitioner sought to address the Director's concerns regarding his lack of a research position and funding, but in so doing, he has significantly changed his proposed endeavor. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See Matter of Izummi, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the Dhanasar analysis. Because the Petitioner has not provided consistent information regarding his proposed endeavor, we cannot conclude that he meets either the first or second prong, or that he has established eligibility for a national interest waiver.⁹ Accordingly, we must withdraw the Director's conclusion that the Petitioner met the first prong of the Dhanasar framework.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁹ Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining appellate arguments concerning his eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).